

HUMAN SERVICES BOARD

In re) Fair Hearing No. J-10/09-544
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 Appeal of)

The petitioner appeals a decision of the Department for Children and Families, Economic Services Division in determining the amount of the petitioner's Food Stamps (now "3 Squares") not to allow as a deduction from her income the amount of money her husband spends each month to purchase marijuana, which has been prescribed to him by his physician for chronic pain relief. In a recent decision the Board upheld the decision of the Office of Vermont Health Access (OVHA) not to provide reimbursement to the petitioner's husband under Medicaid for the purchase of his marijuana. See Fair Hearing No. J-07/09-407. The petitioner agrees that the facts in that matter apply to this appeal as well.

1. The petitioner and her husband are recipients of Food Stamps. The petitioner's husband has been prescribed marijuana by his doctor for the management of chronic pain. He is a "registered possessor" of marijuana through the

Vermont Department of Health, which reportedly shields him from arrest and prosecution for the possession of limited amounts of that drug for his personal use.

2. There are no legal sales or dispensaries of marijuana in Vermont. Registered users must be able to obtain it themselves, even though their suppliers (and all other users of the drug) are acting outside the law. Understandably, the petitioner and her husband feel they cannot divulge the source of his marijuana.

3. The petitioner's husband has found that he is allergic to every prescription narcotic he has tried to use for pain relief. Unfortunately, he has difficulty affording the price he must pay to obtain marijuana.

4. The Board has affirmed OVHA's denial of his request for reimbursement of his expenses in obtaining marijuana under Medicaid. The issue in this appeal is whether the amount he spends himself can be deducted from the family's countable income in determining the amount of their Food Stamps.

ORDER

The Department's decision is affirmed.

REASONS

The Food Stamp regulations allow as a deduction from income "prescription drugs" and "other over-the-counter medication when approved by a licensed practitioner or other qualified health professional". W.A.M. § 273.9(d)(3)(iii). However, § 273.2(f)(1)(iv) of the regulations provides that "medical expenses" are subject to "mandatory verification". The petitioner's dilemma is that even if the purchase of "medical marijuana" for her husband could be allowed as a medical expense, the fact that the sale and distribution of it is illegal renders the petitioner unable to identify the source of its purchase, much less to verify the amount her husband pays for it.

Although it may be considered harsh to require Food Stamp recipients who have a legal dispensation to use marijuana out of medical necessity to bear the entire financial costs of obtaining that drug, it cannot be concluded that "waiving" the usual verification requirements of the Food Stamps program in this regard is either fundamentally unfair or contrary to public policy.¹ Thus,

¹ The petitioner is free to contact her state legislators to encourage them to enact such an exemption from the verification requirements or to otherwise legally allow for the sale, as well as the use, of "medical marijuana".

the Board is bound to affirm the Department's decision in this case. 3 V.S.A. § 3091(d), Fair Hearing Rule No. 1000.4D.

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